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| IN THE MATTER OF | : | BEFORE THE |
| VERIZON WIRELESS | : | HOWARD COUNTY |
| Petitioner | : | BOARD OF APPEALS |
| | : | HEARING EXAMINER |
| | : | BA Case No. 09-038C |

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DECISION AND ORDER

On January 25, 2010, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Verizon Wireless for conditional use approval of a Commercial Communications Tower, Commercial Antennae and equipment compound in an R-20 (Residential- Single Family) Zoning District, filed pursuant to Section 131.N.14 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to complying with the advertising and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Steve Resnick, Esquire, represented the Petitioner. Charles Ryan and Luke Weistwander testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 133.8-acre, irregularly shaped subject property is located in the 1st Election District on the northwest side of Ilchester Road to the northwest of Ilchester Woods Way. It is referenced on Tax Map 31 as Parcel 557, and is also known as 5130 Ilchester Road (the "Property").

2. The Property. The Baltimore Gas and Electric-owned Property is the site of an electric utility facility in use since the 1950s. Three entrances provide access along Ilchester Road. Entrance 1 is situated near the Property's southeastern corner. Entrance 2, the main entrance, generally faces Ilchester Woods Way. Entrance 3 is situated near the Property's southwest corner. Just to the southwest of Entrance 2 is the main building, an L-shaped structure to the rear of which is a large storage yard. Behind this building, to the north and northwest are a multi-bay garage and 200-foot high lattice tower with BGE communications equipment. The main building is generally surrounded by large paved open areas used for parking, vehicle and equipment storage. Several accessory structures dot these paved areas. Behind the paved areas, to the north and northwest, is a large electric distribution substation, multiple high-voltage transmission towers and a broad expanse of electric equipment.

3. Vicinal Properties. All adjacent properties are zoned R-20. To the north, beyond the transmission right-of-way and transmission towers are several single-family detached dwellings accessed from Bonnie Branch Road. To the northeast, beyond a wooded area, are several single-family detached dwellings fronting on Crestwood Lane. Across Ilchester Road to the southeast are multiple single-family detached dwellings fronting on Ilchester Woods Way and Kreger Road, and one dwelling fronting on

Ilchester Road. To the southwest is a neighborhood of single-family detached dwellings fronting on Bonnie Acres Drive.

4. Roads. Ilchester Road along the Property's front lot line has two travel lanes and a right turn lane into Ilchester Woods Way with about 30 feet of paving within a variable width right-of-way. The estimated sight distance from Entrance 2 is more than 600 feet to the northeast and more than 800 feet to the southwest. According to Department of Public Works data, the traffic volume on Ilchester Road east of MD 103 was 5,866 average daily trips as of March 2000.

5. Water and Sewer. The Property is served by public water and sewer, neither of which is required by the use.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts Ilchester Road as a Minor Collector.

7. Zoning History.

A. Case No. BA 91-03E

Petitioner: Baltimore Gas and Electric Company
Request: Special Exception for an outdoor electric substation.
Action: Granted June 27, 1991, subject to the following conditions;

1. The Petitioner shall comply with all applicable laws regulations and guidelines, including, but not limited to, those pertaining to limitations on noise levels.
2. The Petitioner shall submit a Site Development Plan to the Department of Planning and Zoning within six (6) months of the date of this Order.
3. The special exception is limited to the installation and operation of the equipment as designated on the Petitioner's Exhibit Number One, and not to any other buildings, structures, additions or uses; any other future

transformers, capacitors, structures, additions, activities, or equipment not indicated on Petitioner's Exhibit Number One are not approved and are not a part of this granted special exception.

4. The Petitioner shall comply with testimony presented and consult with the vicinal property owners to develop an agreed upon landscaping plan for the screening of the site; however, at minimum, the site shall be screened from the vicinal properties by a staggered line of evergreen trees at least six (6) feet tall to be planted and maintained for the life of the special exception along the northern and southwestern lot lines. For safety purposes, there shall be [a] break in the screening in front of the stormwater management pond, so as to create a line of sight from the office building into the stormwater management area.
5. The Petitioner shall comply with testimony presented and surround the proposed stormwater management pond with a seven (7) foot tall chain link fence topped with a [sic] one (1) foot of barbed wire; said fence shall comply with the Department of Public Works' requirements for access to the stormwater management pond.
6. The Petitioner shall comply with testimony presented and paint the lightning masts throughout the site sky blue in color.
7. The Petitioner shall comply with testimony presented and paint the proposed facility and equipment therein a neutral, "desert tan" in color.
8. The Petitioner shall comply with testimony presented and limit the noise emanating from the facility to no louder than fifty (50) decibels at the property line.

B. Case No. BA 570-C
Petitioner: Baltimore Gas and Electric Company
Request: Permit to enlarge an existing electric service center
Action: Granted July 24, 1968

C. Case No. BA 189-C
Petitioner: Baltimore Gas and Electric Company
Request: Permit to erect a radio tower
Action: Granted May 14, 1956

D. Case No. BA 183-C
Petitioner: Baltimore Gas and Electric Company
Request: Permit to erect an electric distribution center
Action: Granted March 5, 1956

8. The Proposal. The Petitioner is proposing to construct and operate a new commercial telecommunications monopole facility on the BGE property. The proposed facility would comprise a 50-foot by 60-foot compound surrounded by a chain link security fence housing a 213-foot high steel monopole, with antennas and a lightning rod at its top, for a total height of about 223 feet. An aircraft advisory light similar to the lighting on the existing tower would be placed at the top of the monopole and at 106 feet. The Petition states Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA") requirements or guidelines mandate the lighting. The monopole would also be topped by a lightning rod.

The proposed monopole would be sited adjacent to the existing 200-foot lattice tower, which is to be removed. At the monopole's base, the Petitioner proposed to construct a 12-foot by 20-foot equipment shelter, a natural gas generator and other equipment, all within the fenced compound.

The Petitioner and BGE will use the antennas and there is space on the monopole for several additional carriers. BGE telecommunications equipment will be located at the top, and Verizon Wireless antennae, at 196 feet. The equipment will operate automatically and continuously, with no personnel except for routine maintenance visits. Access will be provided from an existing entrance on Ilchester Road.

The Petition states BGE is in need of a replacement structure to accommodate the conversion of its existing internal emergency communications network from an analog system to a digital radio format. It also needs to install a VHF antenna on the proposed monopole to continue a radio control system, which manages the quality of voltage on

various lines.

9. Referring to Petitioner's Exhibits 4 and 5 (several photographs of the towers shown in Exhibit 4), Mr. Ryan testified that none of the 10 BGE towers could accommodate the proposed facility. As he further explained, the existing lattice tower cannot accommodate the Petitioner's equipment because it lacks structural integrity. He also stated FCC and FAA requirements or guidelines necessitate the proposed lighting due to the monopole's height. Additionally, the Howard County Police use Verizon Wireless for certain communications, and asked the Petitioner to increase its coverage in the area, according to Mr. Ryan.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Consistency with the General Plan

Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The General Plan designates the area as Residential. Because the Property is the site of a long-standing BGE facility, and there is no evidence the facility is incompatible with the neighborhood or contrary to the General Plan's land use policies, I conclude the proposed monopole and facility are harmonious with the General Plan.

The Nature and Intensity of the Use. In this case, the Petitioner is proposing a relatively low intensity, passive utility occupying a small portion of the Property. Compared to the more intense uses of the surrounding BE facility, it is a less intense use. The Petitioner and BGE would make infrequent use of the compound.

The size of the site in relation to the use. The proposed area of the Property for the facility is very small relative to the Property. The Site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. The Site will be accessed from an existing driveway off Ilchester Road, and the driveway's location appears to have adequate sight distance for infrequent visits to the compound.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed facility will be combined with a permitted use, several approved Special Exceptions uses. The proposed conditional use, in combination with these uses, is appropriate because it will occupy a small percentage of the Property.

2. Adverse Effect

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured

under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

Any assessment of a conditional use under these criteria initially recognizes that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an R-20 zoning district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a commercial communications tower and antennae in an R-20 Zoning District.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

There is no evidence the use would generate inordinate noise or other physical effects detectable from adjacent properties, as is true of the Petitioner's proposal to

continue the aircraft advisory light at the monopole's top. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed 223-foot monopole/antenna unit would provide service to area neighborhoods. The monopole would be sited 230 feet from the closest property line and several hundred feet from all other property lines. The fenced compound will be sited significantly beyond the 20-foot use setback requirement. The compound itself will be buffered by a fence and proposed landscaping and well buffered by distance and existing vegetation. Although the monopole will be highly visible, it will be significantly less visible than the existing lattice tower.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Presumably, maintenance personnel will park on the adjacent paving, which provides an abundance of parking and a large vehicular circulation area. The landscaping and screening required in previous Decision and Orders and existing woods will screen the facility from Ilchester Road and area residential uses, which are some distance from the proposed use.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing driveways appear to provide safe access, with adequate sight distance.

II. Specific Criteria for Communications Towers or Antennas (Commercial)

(Section 131.N.14)

Section 131.N.14.a provides for the use in an RC Zoning District subject to compliance with the criteria in Section 131.N.14.b.

(1) An applicant for a new communication tower shall demonstrate that a diligent effort has been made to locate the proposed communication facilities on a government structure or, on an existing structure or within a non-residential zoning district, and that due to valid considerations, including physical constraints, and economic or technological feasibility, no appropriate location is available. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the petitioner's network, and an evaluation of existing buildings taller than 50 feet, communication towers and water tanks within one-half mile of the proposed tower.

In this case, the petition and supporting material, including a map and photo-simulations submitted with the petition, demonstrate the absence of any governmental or commercial structure or any water tanks or transmission towers within a one-half mile radius in the vicinity including multiple BGE lattice towers in the area.

(2) New communication towers shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons. Unless collocation has been demonstrated to be infeasible, the conditional use plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users.

The proposed monopole is designed to accommodate at multiple telecommunications carriers and related ground equipment.

(3) Ground level equipment and buildings and the tower base shall be screened from public streets and residentially-zoned properties.

A high fence, existing structures, landscaping and existing woods will screen the equipment.

(4) Communication towers shall be grey or a similar color that minimizes visibility, unless a different color is required by the Federal Communications Commission or the Federal Aviation Administration.

The monopole shall be grey or a similar color unless the FCC or the FAA requires another color.

(5) No signals or lights shall be permitted on a tower unless required by the Federal Communications Commission or the Federal Aviation Administration.

The Petition states the FCC and the FAA require tower lighting on the proposed facility.

ORDER


Based upon the foregoing, it is this **1st Day of February 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Verizon Wireless for a 213-foot high steel monopole, with antennas and a lightning rod at its top, for a total height of about 223 feet, and equipment compound in an R-20 (Residential-Single Family) Zoning District, is **GRANTED;**

Provided however, that;

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed monopole and equipment compound.
2. No additional lighting is permitted other than that required by the FCC or the FAA.
3. The monopole shall be grey or a similar color, unless the FCC or the FAA requires a different color.
4. If no longer used, the communication tower shall be removed from the site within one year of the date the use ceases.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.